

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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WAVES AUDIO, Ltd. and WAVES, Inc.	:	
d/b/a US WAVES, Inc.	:	Civil Action File No: 09 Civ. 2282 (VM)
	:	
Plaintiffs,	:	Consolidated Case Nos.: 09 Civ. 2284
	:	09 Civ. 2285
- against -	:	
	:	ECF Case
RECKLESS MUSIC, LLC d/b/a	:	
SKYLINE RECORDING STUDIO, and	:	
John Does 1-5,	:	Declaration of Guy H. Weiss
	:	
Defendants.	:	
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I, Guy H. Weiss, hereby declare, under penalty of perjury, that the following statements are true and correct.

1. I am a partner at the firm of Adorno & Yoss, LLC ("A&Y") and lead counsel for WAVES AUDIO, Ltd. and WAVES, Inc. d/b/a US WAVES, Inc. (collectively, "Waves") in the above referenced matter. I am fully familiar with the facts set forth herein and respectfully submit this declaration in support of the accompanying application for attorneys fees submitted on behalf of Waves.
2. Waves seek to recover \$52,510.00 in attorneys fees and \$6,901.68 in expenses, representing the reasonable amount of attorneys' fees and costs Waves expended on litigation of its copyright claims during the pendency of the above-captioned litigation (the "Requested Fee Award"). The Requested Fee Award is supported by the contemporaneous time and expense records attached hereto at Exhibit A.
3. Guided by the decision in *Harrell v. Van der Plas*, 2009 WL 3756327, at 1 (S.D.N.Y. 2009), the Requested Fee Award was calculated by multiplying the number of hours reasonably expended on the litigation of the copyright claims (the "Copyright Hours") by reasonable

hourly rates. The rates used for these calculations reflect below fair market value rates for the type of work performed on behalf of Waves in the Southern District of New York.

The Requested Fee Award Seeks Recovery of Fees only for Time Reasonably Spent Litigating the Copyright Claims in the Instant Case.

4. By Order dated April 16, 2009, the Honorable Victor Marrero consolidated this cause of action with two other lawsuits filed by Waves. [Doc. No. 5.] In calculating the Requested Fee Award, I segregated the Copyright Hours from time spent litigating the other two consolidated cases.

The Hourly Rates Sought Are Reasonable.

5. The rates used to compute the Requested Fee Award are based on the rates that would have been billed a copyright client litigating a case in Atlanta, Georgia. These rates are significantly lower than the rates that are applicable to the Southern District of New York. The decision to use the rates of Atlanta, Georgia is based on two factors: First, by using one lead counsel for all of its copyright cases in the USA, Waves has achieved efficiencies of scale by not requiring local counsel to learn from scratch each one of its cases. Secondly, although the use of Atlanta counsel to litigate a case in New York creates additional travel expenses, these expenses are far outweighed by the costs savings of not charging Waves (or the non-prevailing party) with the rates of New York counsel.
6. The hourly rates charged by A&Y in connection with this litigation are based on the skill, experience, and qualifications of the attorneys, paralegals and legal interns that worked on this litigation:

Guy H. Weiss (Billing code ID: **GHW**): I am a 1995 graduate of Cornell University Law School. From 1996 to 1998 I worked as a staff attorney for the Eleventh Circuit Court of Appeals. In that capacity, I reviewed briefs filed in cases before the

Court and drafted legal memoranda recommending case disposition to three judge panels. I am currently a partner at the international law firm of Adorno & Yoss, LLC specializing in litigation. My office is located in Atlanta, Georgia. I am licensed to practice law in the state of Georgia and my Georgia Bar Number is 746741. This Court admitted me to practice *pro hac vice* in the instant case. My hourly rate during the relevant period for this case was \$300.00 per hour.

Todd R. Harris (Billing code ID: **TRH**): At all times relevant to the Requested Fee Award, Mr. Todd R. Harris was a partner in the Firm's New York and New Jersey offices. Mr. Harris' practice focused on complex litigation including insurance coverage, products liability and commercial litigation. He has represented both foreign and domestic companies in various jurisdictions throughout the country. Mr. Harris served as local counsel in the Southern District of New York. His hourly rate during the relevant period for this case was \$350.00 per hour.

Kurt Schuettinger (Billing code ID: **KS**): Kurt Schuettinger is an Associate in the Firm's Commercial Litigation Group. He represents individuals and companies in a variety of civil litigation matters, including franchise disputes, copyright and trademark infringement, restrictive covenants, and real estate disputes. Most recently, Mr. Schuettinger wrote the winning brief in a million dollar franchise dispute, where the court denied the franchisor's motion for a preliminary and permanent injunction filed in the Northern District of Alabama. He has also litigated or mediated over a hundred landlord/tenant disputes. Mr. Schuttinger works directly under Guy H. Weiss. The rates charged for Mr. Schuttinger reflects rates typically charged by Adorno & Yoss, LLC for

an associate of his level of seniority and for the work that he performed in this case. His hourly rate during the relevant period for this case was \$240.00 per hour.

Gregory B. Gilmore (Billing code ID: **GBG**): At the time relevant to the Requested Fee Award, Gregory B. Gilmore was an Associate in the Firm's New Jersey and New York offices and a member of the Litigation Department. The rates charged for Mr. Gilmore reflects rates typically charged by Adorno & Yoss, LLC for an associate of his level of seniority and for the work that he performed in this case. His hourly rate during the relevant period for this case was \$240.00 per hour.

Edward M. Finnerty (Billing code ID: **EMF**): Edward "Teddy" Finnerty is an Associate in the Firm's Atlanta office and a member of the Intellectual Property Department. The rates charged for Mr. Finnerty reflects rates typically charged by Adorno & Yoss, LLC for an associate of his level of seniority and for the work that he performed in this case. His hourly rate during the relevant period for this case was \$240.00 per hour.

Tammerly MacDonald (Billing code ID: **TM**): Tammerly MacDonald is a commercial litigation paralegal with over six years of experience. At the time relevant to the Requested Fee Award, Ms. MacDonald worked at the Atlanta office of Adorno & Yoss, LLC. She worked directly under the supervision of Guy H. Weiss. Ms. MacDonald was responsible for all intellectual property paralegal assistance for the instant case. Her hourly rate during the relevant period for this case was \$120.00 per hour.

Sherri A. Fuselier (Billing code ID: **SAF**): Sherri A. Fuselier is a senior paralegal. At the time relevant to the Requested Fee Award, Ms. Fuselier worked at the

Atlanta office of Adorno & Yoss, LLC. She worked directly under the supervision of Guy H. Weiss. Her hourly rate during the relevant period for this case was \$120.00 per hour.

Nancy L. Merreot (Billing code ID: **NLM**): At the time relevant to the Requested Fee Award, Ms. Merrot was an electronic litigation support assistant. Her duties in this case were limited to ensuring that the videotape of Defendant's infringement was properly stored, copied and reproduced in a readable format to Defense Counsel. Her hourly rate during the relevant period for this case was \$120.00 per hour.

William Davis (Billing code ID: **WD**), **Mazi Bahodori** (Billing code ID: **MB**), **Shameer A. Soni** (Billing code ID: **SAS**) and **Ross D. Andre** (Billing code ID: **RDA**): Messrs. Davis, Bahodori, Soni and Andre were summer law clerks during the times relevant to the Requested Fee Award. They were supervised by Messrs. Weiss and Schuettinger. The law clerks did work and research projects in this case that would otherwise have had to be accomplished by more experienced attorneys. Their hourly rate during the relevant period for this case was \$60.00 per hour.¹

7. Based on my understanding of the rates typically charged by A&Y's peer law firms, it is my belief that the rates charged by A&Y for this type of matter are below the market rate for the Southern District of New York by lawyers of similar skill, qualifications, and experience in the Southern District of New York.

¹ Although a number of different summer law clerks have worked on this litigation over time, there was typically only one summer associate staffed on this matter at any given time. Hours logged for transition time in educating a new summer law clerk concerning the litigation have not been included in this application.

Calculation of the Requested Fee Award.

8. The Requested Fee Award was calculated as follows: (1) for each time entry, a determination was made regarding whether it related solely to the present action as opposed to being part of the consolidated action, (2) entries that were not related to the present action were omitted, (3) entries relating solely to copyright claims were multiplied by the hourly rate of the A&Y billing professional undertaking the work.
9. The fee request for professional services of \$52,510.00 is outlined in detail in Exhibit A to this Declaration.
10. It is a requirement for billing professionals at A&Y to keep a daily record of billable time that is entered into the firm's automated billing system at or about the time the billable time is incurred. This system reflects the total time spent on a case by date, and includes a detailed description of the work performed. The document attached as Exhibit A to this Declaration is a download from that system that accurately sets forth the hours spent and tasks performed by the firm's billing professionals. This record of the work done on this case is a record made and kept in the ordinary course of the business of Adorno & Yoss, LLC. It is, and was at the time these time entries were made, the regular practice of Adorno & Yoss, LLC. to keep such time records.

The Requested Fee Award Fairly Reflects The Substantial Work Undertaken By A&Y.

11. The Requested Fee Award reflects a conservative estimate of the hours spent (and dollar value billed) on the copyright claims in this litigation.

Costs and Expenses.

12. In addition to attorneys' fees, Waves is also seeking its costs and expenses related to this litigation in the total amount of \$6,901.68. A&Y charges its clients \$0.35 per photocopy page and \$1.00 per facsimile page. Waves is also seeking its \$350.00 filing fee, \$755.00

charges for certified copies of the copyrights at issue, one double certified copy at a cost of \$200.00, flights, hotels, overnight delivery and hotel fees. These fees and supporting invoices are attached as Exhibit B to this Declaration and are further detailed below:

Description of cost	Amount
Staples New York: photocopies for exhibits used at trial.	\$158.35
Certified copies of 14 copyrights from the U.S. Copyright office.	\$755.00
Double certified copy of copyright number TX 4-719-720 entitled CI (Version 2.3)	\$200.00
Hotel for Guy H. Weiss (May 1 through May 4, 2010)	\$1,239.25
Hotel for Tomer Elbaz (April 30 through May 4, 2010)	\$1,496.70
Plane ticket to New York and back for Guy H. Weiss	\$318.00
Plane ticket to New York and back for Tomer Elbaz (minus \$400 for leg of trip to Austin Texas that is unrelated to this case).	\$1,069.19
Additional language fee to carry the case materials to New York (divided equally between the Reckless and Quadrosonic cases)	\$57.50
Transcript of Jury Verdict	\$36.72
US District Court Filing Fee	\$350.00
Photocopy charges for March 2009	\$2.80
Courier Services for 3/31/09	\$90.24
Process Server Charges	\$155.00
Federal Express Package on 5/11/09	\$36.71
UPS Package on 5/15/09	\$6.70
UPS Package on 5/19/09	\$6.70
UPS Package on 5/19/09	\$6.70
UPS Package on 9/19/09	\$7.07
UPS Package on 10/15/09	\$7.20
Faxes for the billing cycle ending 1/21/2010	\$2.00
Faxes for the billing cycle ending 3/1/2010	\$41.00
Courier Services for 11/30/08	\$93.42
Courier Services for 11/30/08 (copies)	\$4.50
Filing fee for Motion for Discontinuance: 12/11/08	\$45.00
Federal Express Package on 12/12/2008	\$15.71
Federal Express Package on 1/26/2009	\$13.34
Courier Services for 3/31/2009	\$62.24
Courier Services for 5/31/2009	\$56.98
Courier Services for 8/13/2009	\$137.00
Westlaw Online Charges	\$430.66
Total	\$6,901.68

Respectfully submitted this 14th day of May, 2010.

G. Weiss.

Guy H. Weiss, Esq. (admitted pro hac vice)

Georgia Bar. No. 746741

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